

150 FERC ¶ 61,095  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

InterAmerican Energy Sources LLC

Docket No. EL15-24-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued February 19, 2015)

1. On December 3, 2014, InterAmerican Energy Sources LLC (InterAmerican) filed a petition for a declaratory order requesting that the Commission find the following: (1) that it qualifies for exemption under section 201(f) of the Federal Power Act (FPA)<sup>1</sup> as a wholly owned subsidiary of the Puerto Rico Electric Power Authority (Puerto Rico Authority); and (2) that after the transmission cable described below is constructed and placed in service, the reliability standards that the Puerto Rico Authority uses shall apply, not those imposed by the North American Electric Reliability Corporation (NERC). InterAmerican also requests waiver of the filing fee associated with its petition. In this order, we grant InterAmerican's petition and request for waiver of the filing fee.

**I. Background**

2. InterAmerican states that it is an indirect, wholly-owned subsidiary of the Puerto Rico Authority. InterAmerican states that the Puerto Rico Authority is a public corporation that produces, transmits, and distributes the vast majority of electric power used in Puerto Rico and two of its adjacent islands, Vieques and Culebra. According to InterAmerican, the Puerto Rico Authority is, as a public authority of the Commonwealth of Puerto Rico, exempt from regulation under Part II of the FPA. InterAmerican states that it is a nonprofit limited liability company that will develop and own an underwater transmission cable that will interconnect the electric power systems on the islands of Puerto Rico and St. Thomas, U.S. Virgin Islands (Cable Project).<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824(f) (2012).

<sup>2</sup> Petition at 1-2.

3. InterAmerican states that, as currently proposed, it will own, develop, permit, finance, and construct the Cable Project. The Cable Project will be approximately 50 miles long and will interconnect the Fajardo Substation in Puerto Rico and the Randolph Harley Power Plant (Krum Bay Substation) on St. Thomas. InterAmerican states the Cable Project will most likely be a direct current cable with an expected power transmission capacity of 100 or 200 MW. InterAmerican also states that either it or the Puerto Rico Authority will provide transmission service over the Cable Project.<sup>3</sup>

4. InterAmerican states that power will initially flow from Puerto Rico to St. Thomas. InterAmerican notes that, as islands, both Puerto Rico and St. Thomas have isolated electrical systems. InterAmerican states that the electric system in Puerto Rico is undergoing a number of changes, in part to comply with environmental requirements, and that, with the Cable Project, the Puerto Rico Authority will have an opportunity to sell excess energy to the U.S. Virgin Islands. According to InterAmerican, prices for electricity in St. Thomas will be reduced and reliability improved due to imports from Puerto Rico.<sup>4</sup>

## **II. Petition**

5. In its petition, InterAmerican requests that the Commission confirm the following: (1) that section 201(f) of the FPA exempts InterAmerican from Part II of the FPA; and (2) that upon the in-service date of the transmission cable, the Cable Project and its participants will not be subject to oversight by NERC.

6. With respect to the applicability of the FPA, InterAmerican notes that section 201(f) provides that “[n]o provision in [Part II of the FPA] shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State,” or to

any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.<sup>5</sup>

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> *Id.* at 5 (citing 16 U.S.C. § 824(f) (2012)).

7. InterAmerican also notes that the FPA defines a “State” to include “any organized Territory of the United States.”<sup>6</sup> InterAmerican asserts that under this definition the Puerto Rico Authority is exempt from many provisions of the FPA as a “political subdivision of a State . . . or agency, authority, or instrumentality . . .” of a State.<sup>7</sup> InterAmerican further asserts that, as a wholly-owned subsidiary of the Puerto Rico Authority, it is entitled to the same exemption. InterAmerican points out that the Commission has consistently applied this provision in other proceedings.<sup>8</sup>

8. With respect to oversight by NERC, InterAmerican notes that the Commission has certified NERC as the Electric Reliability Organization (ERO) “for the continental United States,” and the Cable Project will not be located in the continental United States.<sup>9</sup> InterAmerican states that the Puerto Rico Authority and the Virgin Islands Water and Power Authority (Virgin Islands Authority) currently have their own reliability requirements that are followed on their respective systems and are in accordance with good utility practice. InterAmerican states that the Puerto Rico Authority’s reliability standards are supplemented by other guidelines, such as Institute of Electrical and Electronics Engineers Standard 1366-2012 for Electric Power Distribution Reliability. InterAmerican also states that Puerto Rico and St. Thomas will not operate on an integrated basis, and the Puerto Rico Authority and the Virgin Islands Authority will operate their systems independently and under their own reliability criteria. Finally, InterAmerican states that the Cable Project will comply with all applicable reliability criteria.<sup>10</sup>

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<sup>6</sup> *Id.* at 5 (quoting 16 U.S.C. § 796(6) (2012)).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 6-7 (citing *Thermo Cogeneration Partnership, L.P.*, 137 FERC ¶ 62,133 (2011); *Dynegy Holdings, Inc.*, 127 FERC ¶ 62,080 (2009); *Prairieland Energy Inc.*, 92 FERC ¶ 61,139 (2000); *New West Energy Corp.*, 83 FERC ¶ 61,004 (1998); *Long Island Lighting Co.*, 82 FERC ¶ 61,129 (1998); *In the Matter of Nebraska Power Co.*, 5 FPC 8 (1946)).

<sup>9</sup> *Id.* at 8 (quoting *North American Electric Reliability Corporation, Reliability Standards Development and NERC and Regional Entity Enforcement*, 132 FERC ¶ 61,217, at P 21 (2010)).

<sup>10</sup> *Id.* at 8-9.

9. InterAmerican requests that the Commission waive the filing fee associated with its petition. InterAmerican argues that it has shown that it is exempt from Part II of the FPA, and it maintains that it is entitled to the same exemption from fees as “[s]tates, municipalities and anyone who is engaged in the official business of the Federal Government . . . ,” as described in section 381.108(a) of the Commission’s regulations.<sup>11</sup>

### **III. Notice of Filing**

10. Notice of InterAmerican’s Petition was published in the *Federal Register*, 79 Fed. Reg. 73,573 (2014), with interventions and protests due on or before January 2, 2015. None was filed.

### **IV. Discussion**

11. We grant InterAmerican’s petition. Section 201(f) of the FPA provides that no provision in Part II of the FPA shall apply to, or be deemed to include, among other things, a State or any political subdivision of a State, any agency, authority, or instrumentality of a State, or any corporation directly or indirectly wholly owned by a State.<sup>12</sup> The FPA defines a “State” to include “any organized Territory of the United States.”<sup>13</sup> Puerto Rico is an organized territory of the United States.<sup>14</sup> InterAmerican states that it is a wholly-owned subsidiary of the Puerto Rico Authority, which it represents is a political subdivision of a State. Based on these premises, we conclude that InterAmerican will be an exempt public utility under section 201(f) of the FPA, and the provisions of Part II of the FPA would not apply to InterAmerican as specified in section 201(f).

12. Section 201(b)(2) of the FPA provides that “[n]otwithstanding section 201(f),” certain provisions of Part II of the FPA, including section 215 of the FPA, do apply to entities that come within the scope of section 201(f). We conclude, however, that, because NERC is the ERO only for the continental United States, the NERC Reliability Standards would not apply to the Cable Project. As noted in InterAmerican’s petition, the Commission has previously stated that NERC is the ERO for the continental United

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<sup>11</sup> *Id.* at 9 (quoting 18 C.F.R. § 381.108(a) (2014)).

<sup>12</sup> 16 U.S.C. § 824(f) (2012).

<sup>13</sup> *Id.* § 796(6).

<sup>14</sup> *People of State of New York ex rel. Kopel v. Bingham*, 211 U.S. 468, 476 (1909).

States.<sup>15</sup> Moreover, NERC has recognized that its authority as ERO, as it pertains to the United States, extends to the continental United States.<sup>16</sup> Accordingly, while Territories of the United States, unlike Alaska and Hawaii, are not expressly exempted from FPA section 215, the Commission-approved NERC Reliability Standards are only applicable to the continental United States, and thus not to Puerto Rico.<sup>17</sup>

13. Finally, we grant InterAmerican's petition for exemption from the filing fee that otherwise would apply. Section 381.108 of the Commission's regulations provides that States are exempt from the filing fees required in Part 381.<sup>18</sup> As discussed above, Puerto Rico is deemed to be a State for purposes of the FPA, and InterAmerican is an indirect, wholly-owned subsidiary of the Puerto Rico Authority, a public authority of the Commonwealth of Puerto Rico. For this reason, section 381.108 of the Commission's regulations exempts InterAmerican from the filing fee otherwise required for a petition for declaratory order.

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<sup>15</sup> *North American Electric Reliability Corporation, Reliability Standards Development and NERC and Regional Entity Enforcement*, 132 FERC ¶ 61,217 at P 21 (citing *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009)); *see also North American Electric Reliability Corporation*, 149 FERC ¶ 61,141, at P 9 (2014) (stating that "the Commission certified NERC as the ERO for the continental United States under FPA section 215(c)").

<sup>16</sup> *See, e.g., NERC, State of Reliability 2014*, at 3 (May 2014) (stating that "NERC's area of responsibility spans the continental United States, Canada, and the northern portion of Baja California, Mexico.").

<sup>17</sup> 16 U.S.C. § 824o(k) (2012) (providing that "[t]he provisions of this section do not apply to Alaska or Hawaii.").

<sup>18</sup> 18 C.F.R. § 381.108 (2014).

The Commission orders:

InterAmerican's petition is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.